



National Aeronautics and
Space Administration
Washington, DC 20546

December 14, 2021

MEMORANDUM FOR NASA GRANT AND COOPERATIVE AGREEMENT COMMUNITY

SUBJECT: Update on Implementation of Executive Order 14042, *Ensuring Adequate Safety Protocols for Federal Contractors*, for NASA Cooperative Agreements

On November 30, 2021, the U.S. District Court for the Eastern District of Kentucky enjoined implementation of provisions of Executive Order (E.O.) 14042, *Ensuring Adequate COVID Safety Protocols for Federal Contractors*, in Kentucky, Ohio, and Tennessee. Then, on December 7, 2021, the U.S. District Court for the Southern District of Georgia issued a nationwide injunction against the E.O. Both court orders are preliminary and may be supplemented, modified, or vacated, depending on the course of ongoing litigation. Given this uncertainty, NASA provides the following guidance in accordance with direction from the Office of Management and Budget (OMB). This guidance is written to be applicable even if the existing court orders change or new orders are issued.

- I. For existing cooperative agreements that contain a clause implementing requirements of E.O. 14042, NASA Grant Officers shall insert the following enforcement clause into the awards' terms and conditions:
 - a. NASA will take no action to enforce the clause implementing requirements of Executive Order 14042, absent further written notice from the Agency, where the place of performance identified in the cooperative agreement is in a U.S. state or outlying area subject to a court order prohibiting the application of requirements pursuant to the Executive Order (hereinafter, "Excluded State or Outlying Area"). In all other circumstances, NASA will enforce the clause, except for cooperative agreement employees who perform substantial work on or in connection with a covered cooperative agreement in an Excluded State or Outlying Area, or in a covered cooperative agreement recipient workplace located in an Excluded State or Outlying Area. A current list of such Excluded States and Outlying Areas is maintained at <https://www.saferfederalworkforce.gov/contractors/>.
- II. For existing cooperative agreements that do not include a clause implementing requirements of E.O. 14042 but require the clause to be included into the award per [Grant Information Circular \(GIC\) 22-01](#):
 - a. If the work under such a cooperative agreement is performed entirely in an Excluded State or Outlying Area, NASA must not attempt to add a clause implementing requirements of the E.O. into the award.
 - b. For all other cooperative agreements to which the E.O. applies, when exercising a modification or amendment, NASA shall pursue a bilateral modification of the

cooperative agreement to include the clause. If NASA is not exercising a modification or amendment, the Agency may pursue a bilateral modification to include the clause. In either case, when requesting that a cooperative agreement recipient agree to the addition of the clause, NASA shall also insert the following enforcement clause into the award's terms and conditions:

NASA will take no action to enforce the clause implementing requirements of Executive Order 14042, absent further written notice from the Agency, where the place of performance identified in the cooperative agreement is in a U.S. state or outlying area subject to a court order prohibiting the application of requirements pursuant to the Executive Order (hereinafter, "Excluded State or Outlying Area"). In all other circumstances, NASA will enforce the clause, except for cooperative agreement employees who perform substantial work on or in connection with a covered cooperative agreement in an Excluded State or Outlying Area, or in a covered cooperative agreement recipient workplace located in an Excluded State or Outlying Area. A current list of such Excluded States and Outlying Areas is maintained at <https://www.saferfederalworkforce.gov/contractors/>.

The court orders only apply to the application of requirements pursuant to E.O. 14042. There is no change to the Safer Federal Workforce Task Force's guidance for COVID-19 workplace safety protocols for Federal agencies. Federal agency workplace safety protocols in Federal buildings and on Federal lands still apply in all locations. Cooperative agreement recipient personnel working onsite in those facilities must still follow those Federal agency workplace safety protocols, specifically E.O. 13991, *Protecting the Federal Workforce and Requiring Mask-Wearing*, Section 2. NASA's procedures for award recipients working onsite at a NASA facility can be found [here](#).

As litigation pertaining to E.O. 14042 continues and agencies implement the court order, additional or amended guidance may be issued to address new legal developments, resolve logistical difficulties, or mitigate any disruptions to the cooperative agreement management process.

NASA appreciates your cooperation and continued commitment to safety and the NASA mission. Please direct any questions concerning this memorandum to your cognizant NASA Grant Officer.

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